## IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAYMOND D. WILLIAMS, JR.,

\$ No. 369, 2013

Defendant Below,
Appellant,

\$ Court Below—Superior Court

v. \$ of the State of Delaware
\$ in and for New Castle County

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

\$ No. 369, 2013

Crut Below—Superior Court

\$ 1211020919

Plaintiff Below,
Appellee.

Submitted: December 6, 2013 Decided: February 7, 2014

Before HOLLAND, JACOBS and RIDGELY, Justices.

## ORDER

This 7<sup>th</sup> day of February 2014, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On April 25, 2013, the defendant-appellant, Raymond D. Williams, Jr., pled guilty to the charges of Escape After Conviction and Resisting Arrest (Felony), which were the subject of two separate indictments. On May 9, 2013, Williams, acting *pro se*, filed a motion to withdraw his guilty plea. The Superior Court denied Williams' *pro se* motion on June 27, 2013. On June 28, 2013, the Superior Court sentenced

Williams as a habitual offender<sup>1</sup> to a total of ten years at Level V incarceration, to be suspended for decreasing levels of supervision after serving eight years in prison and successful completion of the Key Program. This is Williams' direct appeal.

- (2) Williams' counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c). Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, counsel informed Williams of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the transcript of the guilty plea colloquy. Williams also was informed of his right to supplement his attorney's presentation. Williams raises several issues for this Court's consideration. The State has responded to the position taken by Williams' counsel and also to the issues raised by Williams, and has moved to affirm the Superior Court's judgment.
- (3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and b) the Court must conduct its own review

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<sup>&</sup>lt;sup>1</sup> 11 *Del.C.* § 4214(a) (2007).

of the record in order to determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>2</sup>

- (4) The transcript of Williams' guilty plea colloquy reflects that Williams was charged under two indictments with Felony Resisting Arrest, Escape After Conviction, and multiple drug-related charges. He also was charged with violating the terms of two previously-imposed probationary sentences. In exchange for Williams' plea of guilty to Resisting Arrest and Escape After Conviction, as well as to the VOPs, the State agreed to dismiss the remaining drug charges and to recommend a sentence of eight years in prison followed by decreasing levels of supervision.
- (5) Williams informed the trial court that he was pleading guilty because he was, in fact, guilty of the charged offenses. He stated that no one had coerced him into pleading guilty and that no one had promised him what his sentence would be. He further acknowledged that he was eligible to be declared a habitual offender and that if he were so declared, the applicable sentencing range was eight years to life in prison. Williams also acknowledged that, because of his probation violations, he could be sentenced to an additional 5 years at Level V.

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<sup>&</sup>lt;sup>2</sup> Penson v. Ohio, 488 U.S. 75, 83 (1988); McCoy v. Court of Appeals of Wisconsin, 486 U.S. 429, 442 (1988); Anders v. California, 386 U.S. 738, 744 (1967).

- (6) Williams raises three discernible issues for the Court's consideration on appeal. First, he claims that the Superior Court abused its discretion by denying his motion to withdraw his guilty pleas. He also contends that the Superior Court improperly sentenced him as a habitual offender because the offense of Escape After Conviction is not a crime of violence. Finally, Williams asserts that he should not have been charged with Escape After Conviction because his actions did not involve any element of force or violence.
- (7) We review the Superior Court's denial of Williams' motion to withdraw his plea for abuse of discretion.<sup>3</sup> Upon moving to withdraw his guilty plea, Williams had the burden to establish a fair and just reason to permit the withdrawal.<sup>4</sup> A judge should permit withdrawal of a plea only if the judge determines that "the plea was not voluntarily entered or was entered because of misapprehension or mistake of defendant as to his legal rights." Here, the record unequivocally establishes that Williams entered his plea voluntarily and that he was not operating under any

<sup>&</sup>lt;sup>3</sup> Chavous v. State, 953 A.2d 282, 285 (Del. 2008).

<sup>&</sup>lt;sup>4</sup> DEL. SUPER. CT. CRIM. R. 32(d) (2013).

<sup>&</sup>lt;sup>5</sup> Scarborough v. State, 938 A.2d 644, 650 (Del. 2007) (quoting State v. Insley, 141 A.2d 619, 622 (Del. 1958)).

misapprehension or mistake as to his legal rights.<sup>6</sup> Under the circumstances, we find no abuse of the Superior Court's discretion in denying Williams' motion to withdraw his guilty plea.

(8) Williams' second argument is that the Superior Court improperly sentenced him as a habitual offender because Escape After Conviction is not a violent felony. Williams is wrong. The term "violent felony," as used in Section 4214(a), is defined to include the specific list of offenses enumerated in 11 Del. C. § 4201(c). Section 4201(c) designates Escape After Conviction as a violent felony. We have upheld the constitutionality of that designation.<sup>8</sup> Williams' reliance on the Ninth Circuit's decision in United States v. Piccolo<sup>9</sup> is misplaced. In that case, the Ninth Circuit concluded that the crime of Escape was not a "crime of violence" under the United States Sentencing Guidelines. Unlike the Delaware Code, however, the United States Sentencing Guidelines merely describe, rather than

<sup>&</sup>lt;sup>6</sup> See Somerville v. State, 703 A.2d 629, 632 (Del. 1997).

<sup>&</sup>lt;sup>7</sup> See 11 Del.C. § 4214(a). Section 4214(a) provides, in relevant part, that:

Notwithstanding any provision of this title to the contrary, any person sentenced pursuant to this subsection shall receive a minimum sentence which shall not be less than the statutory maximum penalty provided elsewhere in this title for the 4th or subsequent felony which forms the basis of the State's petition to have the person declared to be an [sic] habitual criminal except that this minimum provision shall apply only when the 4<sup>th</sup> or subsequent felony is a Title 11 violent felony, as defined in § 4201(c) of this title."

<sup>&</sup>lt;sup>8</sup> See Forehand v. State, 997 A.2d 673 (Del. 2010).

<sup>&</sup>lt;sup>9</sup> 441 F.3d 1084 (9th Cir. 2006).

specifically enumerate, "crimes of violence." Williams was sentenced under Delaware law—not federal law. *United States v. Piccolo* is inapposite.

(9) Williams' final argument is that he should have only been charged with Escape in the Second Degree<sup>10</sup> because he did not break out of prison but only failed to return after being given a pass. As the Superior Court explained to Williams at his sentencing hearing, the State may prove the charge of Escape After Conviction if it can show that a defendant, after having been convicted of a crime, leaves the custody of the Department of Correction.<sup>11</sup> The crime of Escape After Conviction applies to defendants who simply walk away or fail to return to custody as well as to defendants who break out of prison by the use of force.<sup>12</sup> Williams admitted that he had previously been convicted of a separate charge and that he escaped the custody of the Department of Correction when he intentionally failed to return from his work pass. We find no merit to Williams' final argument.

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<sup>&</sup>lt;sup>10</sup> 11 *Del. C.* § 1252. Section 1252 provides that a "person is guilty of escape in the second degree when the person escapes from a detention facility or from the custody of the Department of Health and Social Services or the Department of Correction."

<sup>&</sup>lt;sup>11</sup> 11 *Del. C.* § 1253. Section 1253 provides in relevant part that a "person shall be guilty of escape after conviction if such person, after entering a plea of guilty or having been convicted by the court, escapes from a detention facility or other place having custody of such person or from the custody of the Department of Health and Social Services or the Department of Correction."

<sup>&</sup>lt;sup>12</sup> See Forehand v. State, 997 A.2d 673, 676 (Del. 2010).

(10) This Court has reviewed the record carefully and has concluded

that Williams' appeal is wholly without merit and devoid of any arguably

appealable issue. We also are satisfied that Williams' counsel has made a

conscientious effort to examine the record and has properly determined that

Williams could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to

affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs

Justice

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